

claim 6 includes the step of heat treating the cereal sufficiently to obtain such lack of activity.

Review of the language suggested in the Office Action ("sufficient not to decrease") has led to the conclusion that the language actually used is correct. The claims state that the ingredients lack a level of β -glucanase activity sufficient to decrease soluble β -glucan. Inserting the word "not" in the claim language would result in the use of a double negative (lack...not to decrease...) and result in a positive statement. Thus, inserting the word "not" into the claims would result in a recitation that the ingredients have β -glucanase activity sufficient to decrease the β -glucan concentration which, of course, is exactly opposite the present invention.

With respect to the assertion that the specification provides support only for a beer with more than 2% β -glucan, the Examiner's attention is respectfully invited to the specification at page 8, lines 23 et seq.

A feature of the invention is that any ingredient employed in the process lacks in the β -glucanase activity and claim 1 has been amended to more clearly so state. By referring to "any" ingredient, it is respectfully submitted that any required antecedent basis has been provided.

Claim 2 has been amended to refer to w/v in accordance with the working examples of this application.

The dependency of claim 21 has been corrected.

With respect to the asserted lack of enablement on the grounds that no specific steps are provided to teach one skilled in the art how to produce a heat treated cereal lacking enzymatic activity, applicants have previously pointed out that those of ordinary skill in the art are fully aware of such a process and therefore the required enablement was present. The Examiner has responded by pointing out that no references have been cited and in response, applicants respectfully submit a copy of pages from N.L. Kent, Technology of Cereals, 3rd Edition, Pergamon Press.

Finally, with respect to the reference to "corn", it is respectfully pointed out that the specification employs the British definition of this word rather than the American

definition. For the Examiner's information, enclosed is a copy of the title page and page 364 of Collins COBUILD ENGLISH DICTIONARY which shows that in British English, the term "corn" has a primary meaning corresponding to the American word "grain".

In light of the foregoing, it is respectfully submitted that all formal rejections can now be withdrawn.

Claims 1, 11-14, 21 and 22 were rejected under 35 U.S.C. §102 over Lindahl. This rejection is respectfully traversed.

This rejection is based on the assertion that since the Lindahl process is the same as that claimed and the oat suspension equates with the claimed "wort", the final product must be the same. However, the process is not the same and the Lindahl oat suspension does not equate with the claimed wort.

More particularly Lindahl has the object of producing a milky product based on oats (page 1, lines 32-33). The object is achieved by a homogenous and stable cereal suspension which has the taste and aroma of natural oats (page 2, lines 6-8). The process involves grinding oats to meal and suspending the meal in water to create a suspension. Then coarse fibers are removed and the resulting suspension is treated with enzyme, optionally homogenizing the enzyme treated suspension, and finally subjecting the suspension to a high temperature for sterilization (page 2). Note there is no specific teaching or suggestion of using a milled oat which lacks β -glucanase activity. In contrast, the process of producing the claimed wort involves forming an aqueous cereal slurry, mashing the slurry at elevated temperature with an enzyme, cooling and then removing insoluble material to form a wort. Since the insoluble material has been removed, the wort is not a suspension. Lindahl removes coarse fibers rather than all insoluble material and therefore still has a suspension. While Lindahl's cereal suspension has the taste and aroma of natural oats, the beer or wort of the present invention has neither the taste nor the aroma of natural oats. In fact, a beer or wort having such taste or aroma of natural oats would be expected to be unacceptable to consumers. Therefore not only is the process and product of the present invention different from that of Lindahl, those skilled

in the art of making worts and beer would not employ the Lindahl process because that process would be expected to produce an unacceptable product. For the production of a food tasting and smelling like natural oats, the Lindahl process may be fully acceptable but for producing a beer or wort, it is not.

In light of the foregoing considerations, it is respectfully submitted that the rejection based on Lindahl should be withdrawn.

The remaining claims were rejected under 35 U.S.C. §103 over Papazian in view of Lindahl. This rejection is also respectfully traversed. Papazian has been cited to teach the well-known steps for producing beer. It does not teach the wort of the present invention or how to produce that wort. Accordingly, Lindahl is relied on to cure this deficiency. However, as set forth above, Lindahl does not teach the wort of the present invention or how to produce it and further, since Lindahl teaches the preparation of a product having a taste and aroma unacceptable to consumers of beer, the combination of these references not only fails to suggest the claimed invention but the combination is also contraindicated.

Applicants have noted the Levin case cited by the Examiner. That case, decided in 1949, five years before the current patent law was enacted, states that new recipes or formulas for cooking food is not patentable merely because they are new. The standard under current law is that the claimed invention must be both new and unobvious and it is respectfully submitted that the claimed invention in this case qualifies. The process is not only new but it is unobvious and produces an unobvious product having unobvious properties.

In light of all of the foregoing considerations, it is respectfully submitted that this rejection should also be withdrawn.

It is believed that this application is now in condition to be allowed and the early issuance of a Notice of Allowance is respectfully solicited.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on September 6, 2000:

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September 6, 2000
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Respectfully submitted,



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Enclosure